UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
HEARTLAND MEMORIAL HOSPITAL, LLC,	)	CASE NO. 07-20188 JPK
	)	Chapter 11
Debtor.	)	

MEMORANDUM OF DECISION CONCERNING MOTION
TO INTERPRET AND ENFORCE JURISDICTIONAL
PROVISIONS OF THE PLAN OF REORGANIZATION ("MOTION")

The Motion was filed on April 1, 2010 by David Abrams, the Liquidating Trustee under the confirmed liquidation plan of the debtor Heartland Memorial Hospital, LLC ("Liquidating Trustee"). By order entered on September 16, 2010, the court designated the procedures to be followed for determination of the Motion. In accord with that order, a "Response to Motion to Interpret and Enforce Jurisdictional Provisions of the Plan of Reorganization" was filed on behalf of the "Collins Defendants", DLA Piper US LLP, and McGuire Woods, LLP; the Liquidating Trustee filed his "Reply of the Liquidating Trustee in Support of Its Motion to Interpret and Enforce Jurisdictional Provisions of the Plan of Reorganization"; and the Collins Defendants, DLA Piper US LLP and McGuire Woods, LLP (hereinafter referred to collectively as the "Objectants") filed their "Joint Sur-reply in Opposition to Motion to Interpret and Enforce Jurisdictional Provisions of the Plan of Reorganization". The record before the court was delineated in the September 16, 2010 order as follows:

> The court will deem the entire record necessary for determination of the Liquidating Trustee's Motion, and all issues raised by any response thereto, to be the Order Confirming Liquidating Plan of Reorganization, as Amended by First Addendum to Liquidating Plan of Reorganization and Granting Other Relief entered in case number 07-20188 on November 20, 2008; the Liquidating Plan of Reorganization, including all modifications thereof, confirmed by the foregoing order; the Disclosure Statement filed on August 1, 2008 as record entry #1886; the Liquidating Trustee's Motion and initial legal memorandum; any response memoranda filed by any of the above-designated parties; any reply memorandum/ memoranda filed by the Liquidating Trustee; and any *surreply*

memoranda filed by any of the parties.

The Motion initiated a contested matter pursuant to Fed.R.Bankr.P. 9014(a). The court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334(a) and (b); 28 U.S.C. § 157(a) and (b)(1); and N.D.Ind.L.R. 200.1 of the Rules of the United District Court for the Northern District of Indiana. The matter before the court is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L).

The Motion has its genesis in matters addressed in a case pending in the Circuit Court of Cook County, Illinois as case number 09 L 002543, entitled "David Abrams, not individually but as Liquidating Trustee of Heartland Memorial Hospital, LLC v. DLA Piper US LLP, McGuire Woods, LLP, Collins & Collins, Harold B. Collins, and Michael R. Collins". In that case, the defendants were successful in convincing the judge presiding over that action, the Honorable Allen S. Goldberg, to dismiss the plaintiff's complaint with prejudice based upon the interpretation of a provision of the confirmed liquidation plan of Heartland Memorial Hospital, LLC, which provision states the following:

> 9.13 Jurisdiction
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> (I) The entry of a Confirmation Order shall not diminish or impair the Court's subject matter jurisdiction. This Case shall remain open in the Bankruptcy Court until entry of a final decree which shall not occur until after the Effective Date.
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> (ii) The Court shall retain exclusive subject matter jurisdiction of the Case, and all proceedings arising therein or related thereto, including proceedings that aid the consummation of this Plan such as the following: (1) hearing and determining objections to Claims; (2) hearing and determining any Litigation irrespective of whether it is brought by the Debtor, the Liquidation Trustee or the Committee; (3) effectuating the terms of the Plan and enforcing the Confirmation order; (4) determining any and all applications for allowance of compensation and reimbursement of expenses in connection with services rendered by Professionals through the

> Effective Date; (5) determining any and all motions, adversary proceedings and contested matters pending at the Effective Date; (6) modifying any provision of the Plan to the fullest extent permitted by both the Bankruptcy Code and the Plan; (7) resolving controversies and disputes regarding implementation or interpretation of the Plan; and (8) enforcing all orders, judgments, injunctions and rulings entered in connection with the Case.[1]

Another provision of the confirmed liquidation plan is also pertinent to issues raised by the parties: §1.60, which defines the word "Litigation" as follows:

> The causes of action, rights, suits or proceedings, whether in law or in equity, whether known or unknown, whether pending or not, that the Debtor, the Debtor's Estate, the Litigation Trust or the Reorganized Debtor holds or may hold against any Person, Entity or Governmental Unit including, without limitation, those arising (a) under the Bankruptcy Code, including Avoidance Claims and (b) pursuant to any non-bankruptcy law, statute, rule, regulation or ordinance.

Judge Goldberg determined that §9.13(ii)(2) of the plan requires the case before him to be pursued in this court, to the exclusion of any other court. In the state court litigation, the plaintiff filed a motion for reconsideration of Judge Goldberg's ruling of dismissal, a motion which was argued before Judge Goldberg on July 21, 2010. The transcript of that hearing evidences Judge Goldberg's concern that his ruling might deprive the plaintiff of the ability to pursue a claim pending before him, and his concerns that his interpretation of §9.13(ii)(2) be accurate in light of the complicated world of bankruptcy proceedings. At that hearing, Judge Goldberg actually suggested that he call the undersigned judicial officer to discuss this officer's interpretation of §9.13, a proposal which was not acted upon.[2] The record of the state court

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[1] The foregoing provision is stated in §9.13 of the Liquidating Plan of Reorganization filed on August 1, 2008. This plan, together with certain amendments made thereto, was confirmed by the court's confirmation order entered on November 20, 2008.

[2] This court appreciates Judge Goldberg's concerns. In relation to matters before this court, a not uncommon circumstance involves consideration of whether a state court divorce decree involved the imposition of a domestic support obligation as defined by 11 U.S.C.

proceedings before the court in this contested matter also establishes Judge Goldberg's interest in having this court interpret its own order, and that he would take into consideration this court's interpretation in determining the motion for reconsideration filed by the plaintiff in the case before him.[3]

The foregoing being said, the issue addressed by the Motion is this court's interpretation of the scope of §9.13(ii)(2) of the confirmed liquidation plan with respect to jurisdiction of any court other than this court to be involved in "litigation", as that term is defined by §1.60 of the confirmed plan of liquidation. The Liquidating Trustee asserts that this provision must be interpreted in consonance with 28 U.S.C. § 1334(b), a provision which confers "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11". The Liquidating Trustee asserts that this court cannot expand its jurisdiction beyond that provided for by Congress, and that thus the intent of §9.13(ii)(2) of the confirmed liquidation plan could not have been to impart exclusive jurisdiction over designated matters to this court.[4]

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§ 101(14A), or a determination of a property settlement, particularly with respect to provisions of a divorce decree requiring a party not having custody of children to hold the custodial parent harmless from certain debts, or make certain payments to third party payees. The determination of this issue is critical with respect to issues of priority of claims, and in Chapter 13 cases, even the dischargeability of obligations provided for by the divorce decree. This court has routinely taken the position that it will not interpret a state court's divorce decree, based upon legal reasoning not necessary to state here, and in these circumstances, the court has always sent the contesting parties back to state court so that the state court could construe the terms of its own order in relation to issues pending before this court.

[3] Judge Goldberg made it clear that this court's interpretation would not bind him in any way. This court agrees with Judge Goldberg that no decision which this court makes on this motion with respect to construction/interpretation of §9.13(ii)(2) can be binding on Judge Goldberg or can in any manner be a determination which reverses or alters Judge Goldberg's decision in the state court litigation. Obviously, the *Rooker-Feldman Doctrine* precludes any such effect by any ruling made by this court.

[4] The state court litigation is a proceeding "related to" the debtor's Chapter 11 case. It is not a civil proceeding which arises under Title 11 or arises in a case under Title 11, and is also not a "core proceeding" under 28 U.S.C. § 157(b)(2). These are self-evident propositions which

The Objectants oppose the Motion essentially on three grounds. First, the Objectants assert that the Motion seeks an advisory opinion, and that therefore this court has no subject matter jurisdiction because there is no "case or controversy" providing the court with Constitutional jurisdiction. Secondly, the Objectants contend that review of the matters addressed by the Motion invokes the *Rooker-Feldman Doctrine*, and that the court is precluded from determining the Motion due to interference in a state court proceeding based upon the principles provided for by that doctrine. Third, the Objectants contend simply that the provision was correctly construed by Judge Goldberg.

At the outset, let's get something out of the way once and for all, that something being the proposition that a confirmed Chapter 11 plan – whether it be a liquidating plan or a reorganization plan – is a contract between the debtor and entities affected by the plan. Years and years ago, before the passage of the Bankruptcy Code in 1978, bankruptcy courts had very limited jurisdiction, based upon the hoary concept of "plenary jurisdiction", which was itself based upon esoteric concepts of what property was actually within the jurisdiction of a bankruptcy court and what property was excluded from that jurisdiction. Under pre-Code law, Chapter 11 plans did resemble a contractual undertaking among the debtor and entities affected by a plan, in that the Bankruptcy Act did not contain a number of provisions now in the Bankruptcy Code which impart power to the bankruptcy court to impose arrangements on creditors whether they agree to them or not. Riding along with the pre-Code concept of a plan's being akin to a contract were somewhat parallel provisions of state law which allowed for accommodations between debtors and creditors, including assignments for the benefit of creditors pursued under state law, and liquidations effected by what were truly accord and satisfaction contracts among a debtor and all of its creditors. The state court arrangements in

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the court will not further address.

many instances required the affirmative consent of all creditors involved in the arrangement, and thus the arrangement was very much like a contract among the affected parties.

However, a plan of reorganization or liquidation effected under the Bankruptcy Code is not in any manner a contract. In order to participate in voting on a plan, an entity must have an allowed claim, and in nearly every case in which this author has ever been involved, not every creditor files a claim in the case or is automatically provided for by operation of Fed.R.Bankr.P. 3003(b)(1) without the necessity of filing a proof of claim. Creditors and parties-in-interest who do not file proofs of claim are still bound by the confirmed bankruptcy plan in all of its aspects, whether or not they in fact express any consent to the terms of a plan. Pursuant to 11 U.S.C. § 1126(f), a class of creditors provided for by a plan "that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan".[5] Thus, without affirmatively consenting to a plan, an unimpaired class of creditors is deemed to have conclusively accepted it, a principle far removed from the consensual formation of contracts by all involved. In dealing with the manner of treatment of creditors under a plan, 11 U.S.C. § 1129(b) allows a court to impose treatment under a plan upon non-consenting creditors, provided that the provisions of that section are met – again, a concept entirely removed from contractual formation. The plan itself cannot be implemented until the court enters an order confirming it, and it is the order of confirmation and not the plan itself which provides the plan with its binding effect. 11 U.S.C. § 1141(a) provides that a confirmed plan binds the debtor and other interested parties, and thus even if every entity potentially affected by a plan affirmatively consensually agreed to it, the plan would have no impact under Chapter 11 of the Bankruptcy Code without a court order of confirmation. The foregoing are just a few examples of provisions of the Bankruptcy Code which affect matters relating to the

[5] The concept of "impairment" is addressed by 11 U.S.C. § 1124.

formulation, confirmation and implementation of Chapter 11 plans of reorganization or liquidation, provisions which do not rely upon the consent of any creditor or of the debtor, provisions which are imposed by law without any agreement at all as to their application or effect.

Many, many, many cases describe a confirmed plan as a contract among affected parties, in this court's view an ill-advised analogy. Among those cases is one cited by the Objectants, *Ernst & Young, LLP v. Baker O'Neal Holdings, Inc.*, 304 F.3d 753, 755 (7th Cir. 2002), in which the following is stated:

> A confirmed plan of reorganization is in effect a contract between the parties and the terms of the plan describe their rights and obligations. *See In re Chicago, Milwaukee, St. Paul and Pacific R.R., Co.,* 891 F.2d 159, 161 (7th Cir.1989).

This pronouncement is *dicta* with respect to a confirmed plan's being an actual contract among affected parties: in the context of the case in which it appears, this language only connotes that principles of construction of contracts will be applied to the construction of potentially ambiguous provisions of a Chapter 11 plan. These principles are essentially the same principles that are applied to the construction/interpretation of ambiguous legislative enactments, ambiguous court orders, ambiguous deeds, ambiguous mortgages, and ambiguous contracts. All the foregoing quoted pronouncement establishes is that with respect to interpreting a potentially ambiguous provision of a confirmed Chapter 11 plan, a court is to be guided by the same principles as are applied in these other contexts of interpretation/construction, principles which essentially derive from rules of interpretation/construction of contracts. As stated in *In re Airadigm Communications, Inc.*, 616 F.3d 642, 664 (7th Cir. 2010):

> Principles of contract law apply to interpreting a plan of reorganization: "A confirmed plan of reorganization is in effect a contract between the parties and the terms of the plan describe their rights and obligations." *Ernst & Young LLP v. Baker O'Neal*

Holdings, Inc., 304 F.3d 753, 755 (7th Cir.2002).

The impact of the foregoing statement had been presaged by *In re Heartland Steel, Inc.*, 389 F.3d 741, 744 (7th Cir. 2004) as follows:

> Each party can find support for its proposition. In *Ernst & Young LLP v. Baker O'Neal Holdings, Inc.,* 304 F.3d 753, 755 (7th Cir.2002), we stated that "[a] confirmed plan of reorganization is in effect a contract between the parties and the terms of the plan describe their rights and obligations." But in *In re Harvey,* 213 F.3d 318, 321 (7th Cir.2000), we pointed out that a confirmed plan is analogous to a consent decree and like other court orders (but unlike private contracts), is given preclusive effect. The appellants ask us to view the plan and confirmation order as distinct and separate entities and to regard the latter but not the former as a court order subject to the provisions of 9006(a). When a court enters the confirmation order, however, it is passing judgment on the plan itself, giving effect to every provision of that plan and, in essence, incorporating by reference the entirety of the plan into the judgment. *Cf. In re Matter of Weber,* 25 F.3d 413, 416 (7th Cir.1994) (noting that by confirming a plan, a reorganization court passes judgment on the terms of that plan).(footnote omitted) In essence then, all of the provisions of the plan are "prescribed or allowed" by the confirmation order of the court, thus meeting the prerequisite of Bankruptcy Rule 9006(a). (emphasis supplied).

Thus, the confirmed liquidation plan of Heartland Memorial Hospital, LLC is not a contract. Rather, it is an arrangement among the debtor and its creditors which was imposed and effected pursuant to provisions of applicable law, and was not effective until confirmed by the court's order of confirmation. In this light, the confirmed plan and all of its effects are creatures of, and derive their impact only from, the court's confirmation order.

Let's next address two of the three principal contentions made by the Objectants.

The first of these contentions is that the Motion seeks the court's rendering of an advisory opinion. The court is fully aware of its Constitutional jurisdiction to determine only "cases or controversies", and thus if there is no actual "case or controversy" before the court, the court has no jurisdiction to act. Bound up with the Objectants' contentions is the concept that Judge Goldberg's initial granting of their motion to dismiss with prejudice conclusively

determined the construction/interpretation of §9.13 for all purposes. To the contrary, Judge Goldberg's interpretation is binding with respect to the case before him, but it is in no manner binding on this court in any other context. The record establishes that there are in fact several pending cases in which the construction of §9.13 may be implicated with respect to jurisdiction to be exercised by state courts, and it is possible that other cases will arise in relation to the bankruptcy case of Heartland Memorial Hospital, LLC which will implicate this issue. While the issue addressed by the Motion arose because of a specific action taken in a specific case, the issue transcends that case and presents a case or controversy to the court with respect to construction to be accorded to this plan in other pending cases and cases which may in the future be pending. Moreover, as stated above, in the context of construction of divorce decrees and other marital orders, this court always directs the parties to seek the interpretation of the issuing court as to the construction to be given to those orders, even though this court clearly has the jurisdiction to itself determine the meaning of those orders in the context of federal bankruptcy law. This court's request for a state court's construction of its own order does not in any manner seek an advisory opinion from that court, because there is an actual controversy between parties, the resolution of which is in part dependent upon the interpretation to be given to the order of the court which originally entered it. Finally, Judge Goldberg himself endorsed the procedure employed by the Liquidating Trustee, stating that this court's determination of the Motion might be considered by him in his ruling on the Liquidating Trustee's motion for reconsideration, but also acknowledging that this court's determination would not be binding upon him. There is an actual controversy between parties, and the court's determination of the Motion will not in any manner result in an advisory opinion.

Let's also dispense with considerations of the *Rooker-Feldman Doctrine*. It is unnecessary to recite the parameters of the Doctrine in this decision. Suffice it to say that the Motion requests the construction of a plan provision confirmed by an order of this court, and

thus comprising a portion of this court's order. Again, a United States Bankruptcy Court is not bound for all purposes by the construction of a provision of a confirmed plan by a state court in an action between two parties. Any determination made on the Motion by this court will not in any manner affect any decision which Judge Goldberg makes in the state court litigation, and he is absolutely free to determine any issues before him in that litigation regardless of any determination made by this court with respect to the Motion. This court is free to determine the Motion without any concern for the application of the *Rooker-Feldman Doctrine*.

Now to the merits of the Motion.

As established by *Ernst & Young LLP v. Baker O'Neal Holding, Inc.*, *supra*, the provisions of the plan are to be construed in accordance with the rules for construction of contracts. Thus, if there is no ambiguity in the provision, there is no basis for the court to apply any construction principles.

First, §9.13(ii)(2) is not in any manner a "choice of venue" or a "forum selection" provision, and thus cases such as *IFC Credit Corp. v. Aliano Brothers General Contractors, Inc.*, 437 F.3d 606 (7th Cir. 2006) have no application to issues before the court. Section 9.13(ii)(2) is phrased exclusively in terms of jurisdiction.

What in fact does §9.13(ii)(2) state? The term "litigation" is defined by §1.60 of the plan in the broadest imaginable terms in relation to matters in which the entities therein described – including the Liquidating Trustee – were, are, or may be the plaintiff. This provision does not limit the definition of "litigation" to cases either within the exclusive jurisdiction of the bankruptcy court or cases which are within the concurrent jurisdiction of the bankruptcy court, as that jurisdiction is provided by 28 U.S.C. § 1334(b). The plan defines "litigation", in the context above, as all litigation. Section 9.13(ii)(2) states very clearly that the court "shall retain exclusive subject matter jurisdiction of . . . all proceedings . . . related thereto", including "hearing and determining any litigation . . ." (emphasis supplied). Thus, there is no ambiguity in

§9.13(ii)(2): it very clearly provides that the United States Bankruptcy Court shall retain exclusive jurisdiction of any "related to" litigation, whether that matter was initiated prior to the filing of bankruptcy, during the pendency of the bankruptcy case prior to confirmation of the plan, or after confirmation of the plan. As a result, Judge Goldberg's interpretation of §9.13(ii)(2) is absolutely correct.

But not so fast, chihuahuas. The plan provision, as so applied, violates 28 U.S.C. § 1334(b), which defines the scope of federal jurisdiction with respect to cases of the nature of that now pending before Judge Goldberg, stating the following:

> **(b)** Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

The United States Bankruptcy Court's jurisdiction, as derivative of that of the United States District Court, is only "concurrent" jurisdiction with other courts with respect to "related to" proceedings in relation to a bankruptcy case. Without citation of authority or exposition of why this is true – it just **is** true – the United States Court of Appeals for the Seventh Circuit is the strictest of the Circuit Courts in circumscribing the jurisdiction of the United States Bankruptcy Courts, including jurisdiction over "related to" matters. It is anathema to the Seventh Circuit that bankruptcy courts expand their jurisdiction beyond that strictly allowed by Acts of Congress. This court is well aware of the Seventh Circuit's views of its jurisdiction, and in innumerable cases this court has acted upon that restricted jurisdiction in determining issues before it.

The United States Bankruptcy Court is a creature of limited statutory jurisdiction. That jurisdiction is specified by an Act of Congress, and this court is not in any manner empowered to exceed the boundaries of the jurisdiction so established. As it is written, §9.13(ii)(2) states an impermissible expansion of the jurisdiction of the United States Bankruptcy Court over

proceedings "related to" the case of Heartland Memorial Hospital, LLC.

The court has made clear that the liquidation plan, as confirmed by its order of confirmation, is not a contract. However, if one were to take the view that the plan is in some form a contract, parties cannot impart federal jurisdiction by mere consensual agreement. As stated in *Chicago Typographical Union No. 16 v. Chicago Sun-Times, Inc.*, 935 F.2d 1501, 1504-1505 (7th Cir. 1991):

> The appeal from the decision upholding the arbitration award is the easier, so let us take it first. Federal courts do not review the soundness of arbitration awards. An agreement to submit a dispute over the interpretation of a labor or other contract to arbitration is a contractual commitment to abide by the arbitrator's interpretation. If the parties want, they can contract for an appellate arbitration panel to review the arbitrator's award. But they cannot contract for *judicial* review of that award; federal jurisdiction cannot be created by contract. Unless the award was procured by fraud, or the arbitrator had a serious conflict of interest-circumstances that invalidate the contractual commitment to abide by the arbitrator's result-his interpretation of the contract binds the court asked to enforce the award or to set it aside. The court is forbidden to substitute its own interpretation even if convinced that the arbitrator's interpretation was not only wrong, but plainly wrong. (citations omitted)[6]

As stated in *Smith v. Booth*, 823 F.2d 94, 96 (5th Cir. 1987):

> "It is settled law that the parties may not, by silence or agreement, confer upon the federal courts that jurisdiction which Congress has withheld." *Warren G. Kleban Eng'g Corp. v. Caldwell,* 490 F.2d 800, 803 n. 2 (5th Cir.1974).

As stated in *Kevco, Inc. v. NGC, Inc., et al.*, 309 B.R. 458, 463, 464 (Bankr. N.D. Tex. 2004), *aff'd* 2003 WL 23784080 (N.D. Tex. 2003), *aff'd* 113 F.3d Appx. 29 (5th Cir. 2004), *cert. denied* at 125 S.Ct. 1699 (2005):

> A reorganization plan functions as a contract in its own right. *In re U.S. Brass Corp*., 301 F.3d 296, 307 (5th Cir.2002); *U.S. v.*

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[6] Obviously, the foregoing citation precludes the court from undoing the construction arrived at by Judge Goldberg. Again, the court is not doing anything with the construction arrived at by Judge Goldberg, other an agreeing with him.

> *Ramirez,* 291 B.R. 386, 392 (N.D.Tx.2002) (stating that "a confirmed Chapter 11 plan constitute[s] a binding contract"). But, parties may not, by silence or agreement, confer upon the federal courts that jurisdiction which Congress has withheld. *Smith v. Booth,* 823 F.2d 94 (5th Cir.1987); *Warren G. Kleban Engineering Corp. v. Caldwell,* 490 F.2d 800 (5th Cir.1974). Since federal courts are courts of limited jurisdiction, having "only the authority endowed by the Constitution and that conferred by Congress," *Epps v. Bexar–Medina–Atascosa Counties Water Improvement Dist. No. 1,* 665 F.2d 594, 595 (5th Cir.1982), the retention of jurisdiction provisions of the Plan cannot confer or expand the Court's subject matter jurisdiction. *U.S. Brass,* 301 F.3d 296 at 303 (stating that "the source of the bankruptcy court's subject matter jurisdiction is neither the Bankruptcy Code nor the express terms of the Plan. The source of the bankruptcy court's jurisdiction is 28 U.S.C. §§ 1334 and 157") (quoting *United States Tr. v. Gryphon at the Stone Mansion, Inc.,* 216 B.R. 764, 769 (W.D.Pa.1997), *aff'd,* 166 F.3d 552 (3rd Cir.1999)). Thus, this Court must look solely to 28 U.S.C. § 1334 for its jurisdiction and must consider the effect of confirmation of the Plan on its jurisdiction. (footnote omitted)

As stated in *Shapo v. Engle*, 463 F.3d 641, 644-645 (7th Cir. 2006):

> But if the Master Payment Agreement in this case was not a part of the settlement, Engle's compliance with it has no more federal significance than any routine postlitigation disagreement between lawyer and client. *Taylor v. Kelsey,* 666 F.2d 53 (4th Cir.1981) (per curiam). And even if the Master Payment Agreement was part of the settlement, this would not automatically place disputes over the agreement within federal jurisdiction. The purpose of the ancillary jurisdiction of the federal courts, well illustrated by *Dale M.,* is to enable a federal court to render a judgment that resolves the entire case before it and to effectuate its judgment once it has been rendered. *Peacock v. Thomas,* 516 U.S. 349, 355-59, 116 S.Ct. 862, 133 L.Ed.2d 817 (1996); *Kokkonen v. Guardian Life Ins. Co. of America, supra,* 511 U.S. at 379-80, 114 S.Ct. 1673; *Lucille v. City of Chicago,* 31 F.3d 546, 548 (7th Cir.1994); *Smyth ex rel. Smyth v. Rivero,* 282 F.3d 268, 282 (4th Cir.2002); *McAlpin v. Lexington 76 Auto Truck Stop, Inc.,* 229 F.3d 491, 501 (6th Cir.2000). It is not to enable a federal court to encroach on the jurisdiction reserved to the states merely because the parties would prefer to have a federal court resolve their future disputes (not necessarily future disputes between them, moreover-Foley & Lardner was not a party to Shapo's suit). The settlement agreement could not require that if one of the parties and his lawyer had a falling out, and the party sued the lawyer for malpractice in the litigation that was settled, the suit could be brought in the federal court even if the malpractice suit was not

> based on federal law and there was no diversity of citizenship. Parties cannot confer federal jurisdiction by agreement. *Hays v. Bryan Cave LLP,* 446 F.3d 712, 714 (7th Cir.2006); *Wolf v. Cash 4 Titles,* 351 F.3d 1348, 1357 (11th Cir.2003); *Presidential Gardens Associates v. United States ex rel. Secretary of Housing & Urban Development,* 175 F.3d 132, 140 (2d Cir.1999). There would have to be special circumstances to allow a federal court to enforce such a requirement, such as an existing dispute between lawyer and client that if unresolved would preclude a settlement.

As stated in *Kalamazoo Realty Venture Limited Partnership v. Blockbuster Entertainment Corporation*, 249 B.R. 879, 886 (Bankr. N.D. Ill. 2000):

> Defendants also argue that the bankruptcy court has exclusive jurisdiction over the instant lawsuit because, at the conclusion of Discovery Zone's first bankruptcy case, that court explicitly retained "exclusive jurisdiction over all matters arising out of or relating to the [Discovery Zone bankruptcy case]" in its Plan of Reorganization and retained jurisdiction over Discovery Zone, the Viacom Entities, and various landlords (including plaintiff in the instant case) "to implement and effectuate the provisions of ... [the Assignment] Order." Defendants argue that because the bankruptcy court retained exclusive jurisdiction over certain matters, this court does not have jurisdiction over the instant lawsuit. Defendants contend that in *AM International, Inc. v. Datacard Corp.,* 106 F.3d 1342 (7th Cir.1997) (" *AMI* "), the Seventh Circuit found that a Delaware bankruptcy court had validly retained exclusive jurisdiction over a matter in dispute and deferred to the bankruptcy court. Yet in *AMI,* the Seventh Circuit stated that the bankruptcy court had retained jurisdiction over an issue specifically sounding in bankruptcy – objections to the allowance of claims – and that the bankruptcy court "remained the sole authority on *bankruptcy issues such as the allowance of claims.*" *Id.* at 1352 (emphasis added). In contrast, the guaranty in the instant case is not a bankruptcy matter.
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> "A reorganization court frequently will insert a clause in a plan that reserves jurisdiction to protect the confirmation decree." *Sanders v. Brady,* 936 F.2d 212, 219 n. 2 (5th Cir.1991). However, it is well settled that, "a Plan may not delegate unlimited authority to a bankruptcy judge, and that provision is meaningful only to the extent that core jurisdiction is otherwise found." *Spiers Graff Spiers v. Menako (In re Spiers Graff Spiers),* 190 B.R. 1001, 1008 (Bankr.N.D.Ill.1996). Moreover, when a bankruptcy court retains jurisdiction over a certain dispute, it does not divest any other court of concurrent jurisdiction. *See, e.g., Brady,* 936 F.2d at 219 ("At most, this provision enabled the bankruptcy court to adjudicate the dispute between the City and the appellants even

> though the debtor's plan was already confirmed; it did not divest the state court of its concurrent jurisdiction to resolve that dispute."). Accordingly, the bankruptcy court's retention of jurisdiction over various parties and over all matters arising out of or related to Discovery Zone's bankruptcy case does not divest this court of jurisdiction to resolve disputes that involve those parties, especially suits that arise under state law. In short, "[defendants'] principle argument is that once a bankruptcy court acquires jurisdiction of a dispute, the power to decide lasts forever." *Elscint, Inc. v. First Wisconsin Financial Corp. (In re Xonics, Inc.),* 813 F.2d 127, 131 (7th Cir.1987). Like the Seventh Circuit in *Xonics,* the court rejects this argument.

It is true that this court has subject matter jurisdiction over a "related to" matter such as that involved in the case before Judge Goldberg. It is also true that 28 U.S.C. § 1334(b) provides Judge Goldberg with concurrent jurisdiction over that case. In light of statutory limitations on the court's jurisdiction, this court could not validly divest state courts of concurrent jurisdiction provided for by § 1334(b), any more than this court, for example, could impart jurisdiction to state courts for matters within the scope of 11 U.S.C. § 523(c)(1), or empower a state court to enter an order confirming a Chapter 11 plan. Construed in the manner in which it must be construed, §9.13(ii)(2) exceeds the federal jurisdiction which this court may exercise.

The bottom line is that the court entered a final order confirming a Chapter 11 plan of liquidation, which plan included a provision which is not a valid exercise of the court's continuing jurisdiction either with respect to post-confirmation matters in relation to the debtor's case, or with respect to proceedings related to that case in general. Section 9.13(ii)(2) very clearly contravenes applicable law. Although encompassed within the court's order of confirmation, the court was not specifically aware of the expansive, and invalid, jurisdictional scope of §9.13(ii)(2) at the time of entry of the confirmation order. This issue was brought to the court's attention by the Motion. Now that it has been brought to the court's attention, the court has the authority under Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b) to correct the error: *Dish v. Rasmussen*, 417 F.3d 769 (7th Cir. 2005).

The issue becomes the specific provision of Rule 60(b) which will provide the court with the necessary authority to deal with a clearly invalid provision of the confirmation order.

The court does not deem Rule 60(b)(1) – which allows relief from a judgment to be accorded based upon "mistake, inadvertence, surprise or excusable neglect" – to be applicable in the context of a provision in an order which is totally contrary to law. Although the provision came to be part of the order due to oversight as to its scope at the time the confirmation order was entered, the error of according exclusive federal jurisdiction to the court in contravention of the jurisdiction the court may exercise under 28 U.S.C. § 1334(b) transcends the concept and focus of Rule 60(b)(1).

The circumstances of the instant matter obviously do not fall within the scope of matters addressed by Rules 60(b)(2), 60(b)(3) or 60(b)(5). In *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367 (2010), the Supreme Court in part limited the scope of Rule 60(b)(4) to circumstances in which the court lacks jurisdiction to enter an order or judgment. As held in *Margoles v. Johns*, 660 F.2d 291 (7th Cir. 1982), Rule 60(b)(4) is applicable only when at the time the order was entered, the court lacked subject matter jurisdiction, lacked jurisdiction over the parties subject to the order, acted in a manner inconsistent with due process, or engaged in a plain usurpation of power; *See*, *In re Whitney-Forbes, Inc.*. 770 F.2d 692 (7th Cir. 1985). This is not the circumstance here – the court had proper jurisdiction, there was no violation of due process with respect to the entry of the order, and the act of entering the confirmation order was within the scope of the court's power.[7]

That leaves Rule 60(b)(6), which provides for relief from a judgment or order for "any other reason that justifies relief". As stated in *Liljeberg v. Health Services Acquisition Corp.,*

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[7] While the effect of §9.13(ii)(2) might be viewed as a usurpation of power granted by Congress to state courts, the focus of "voidness" under Rule 60(b)(4) is the entry of the order itself, not the impact of a particular provision in the order in post-order circumstances.

108 S.Ct. 2194, 2204 (1988):

> In particular, Rule 60(b)(6), upon which respondent relies, grants federal courts broad authority to relieve a party from a final judgment 'upon such terms as are just,' provided that the motion is made within a reasonable time and is not premised on one of the grounds for relief enumerated in clauses (b)(1) through (b)(5). [footnote omitted]. The Rule does not particularize the factors that justify relief, but we have previously noted that it provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice', *Klapprott v. United States*, 335 U.S. 601, 614-615, 69 S.Ct. 384, 390, 93 L.Ed. 266 (1949) . . .

None of the grounds in Rule 60(b)(1) – (5) apply to the matter before the court. The correction of the confirmation order by limiting §9.13(ii)(2) to its proper scope is necessary to accomplish justice by preventing invalid exercise of exclusive federal jurisdiction. The court determines that Fed.R.Bank.P. 9024/Fed.R.Civ.P. 60(b)(6) provides the necessary authority for the court, on its own impetus exclusive of the Liquidating Trustee's Motion, to correct §9.13(ii)(2).[8]

11 U.S.C. § 105(a) provides the court with the authority to *sua sponte* take any action or make any determination necessary or appropriate to implement its orders, or to prevent an abuse of process. The Motion has brought the issue of the invalidity of §9.13(ii)(2) to the court's attention, and while the court is not invoking 11 U.S.C. § 105(a) as the basis for the correction of the confirmation order, this statute provides the authority for the court to raise the issue of invalidity on its own.

The bottom line is that the Motion presents a judicable controversy to the court which does not result in an advisory opinion and which does not implicate in any manner the *Rooker-Feldman Doctrine*. The Motion seeks construction/interpretation of §9.13(ii)(2) of the confirmed liquidation plan, a request which the court has determined results in this court's agreement with

[8] The determination concerning the applicability of Rule 60(b)(6) renders unnecessary consideration of the court's power to take "any action or [make] any determination necessary or appropriate to enforce or implement court orders . . . or to prevent an abuse of process" pursuant to 11 U.S.C. §105(a) as a potential source of authority for the court's determination.

the construction/interpretation of that provision determined by Judge Goldberg in his initial decision on the motion to dismiss in the state court case. Moreover, the court has independently determined – regardless of any issue raised by the Motion – that the clear effect of §9.13(ii)(2) is in excess of the court's jurisdiction, and thus the court has independently determined that this provision of its order confirming the debtor's liquidation plan requires adjustment.

The court determines that §9.13(ii)(2) of the confirmed Liquidating Plan of Reorganization of Heartland Memorial Hospital, LLC is contrary to law to the extent that it provides for exclusive jurisdiction of the United States Bankruptcy Court over civil proceedings "related to" the debtor's Chapter 11 case, in contravention of 28 U.S.C. § 1334(b). The matter before the court involves only §9.13(ii)(2) of the confirmed plan, and does not involve any other provision of §9.13. To conform §9.13(ii)(2) to the permissible scope of the court's jurisdiction under 28 U.S.C. §1334(b), the court determines that the first sentence is deleted from §9.13(ii) of the confirmed plan, and the following sentence is inserted in its place:

> The court shall retain subject matter jurisdiction of the Case, and all proceedings arising therein or related thereto, to the extent of the subject matter jurisdiction provided for by applicable law, including 28 U.S.C. §1334(b), including proceedings that aid the consummation of this Plan such as the following:

IT IS ORDERED as follows:

A. The Motion to Interpret and Enforce Jurisdictional Provisions of the Plan of Reorganization is granted to the extent that the court determines that the construction/interpretation of §9.13(ii)(2) of the confirmed liquidation plan made by the Honorable Allen S. Goldberg in a case pending in the Circuit Court of Cook County, Illinois as case number 09 L 002543, entitled "David Abrams, not individually but as Liquidating Trustee of Heartland Memorial Hospital, LLC v. DLA Piper US LLP, McGuire Woods, LLP, Collins & Collins, Harold B. Collins, and Michael R. Collins", is correct: the provision provides for

exclusive jurisdiction of this court with respect to litigation constituting proceedings related to the Chapter 11 case of Heartland Memorial Hospital, L.L.C.

B. Pursuant to the court's authority under 11 U.S.C. § 105(a) to sua sponte address matters provided for by the second sentence of that statute, pursuant to Fed.R.Bankr.P. 9024/ Fed.R.Civ.P./60(b)(6) the court determines independently of the Motion that §9.13(ii)(2) of the liquidating plan of reorganization, as confirmed by the court's order entered on November 20, 2008, must be corrected to conform to 28 U.S.C. §1334(b).

C. Pursuant to the determinations stated in foregoing sub-paragraph B, to conform §9.13(ii)(2) to the permissible scope of the court's jurisdiction under 28 U.S.C. §1334(b), the court determines that the first sentence is deleted from §9.13(ii) of the confirmed plan, and the following sentence is inserted in its place:

> The court shall retain subject matter jurisdiction of the Case, and all proceedings arising therein or related thereto, to the extent of the subject matter jurisdiction provided for by applicable law, including 28 U.S.C. §1334(b), including proceedings that aid the consummation of this Plan such as the following:

Dated at Hammond, Indiana on June 9, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Liquidating Trustee, US Trustee